

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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Refer Reply To:

CC:CORP:B01

PLR-138074-13

Date: June 26, 2014

Parent =

Distributing =

Controlled =

DRE 1 =

DRE 2 =

Former DRE =

Foreign Sub 1 =

Foreign Sub 2 =

Foreign Sub 3 =

Foreign Sub 4 =

Foreign Sub 5 =

Foreign Sub 6 =

Business A =

Business B =

Business C =

Country A =

Country B =

Country C =

Country D =

Country E =

Country F =

Country A Treaty =

State Z =

Date 1 =

Date 2 =

Date 3 =

c =

d =

Dear :

We respond to your August 23, 2013, request for rulings on certain federal income tax consequences of a proposed transaction described below (the Proposed Transaction). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the distributions described below: (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are used principally as a device for the distribution of the earnings and profits of a distributing corporation or a controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code and Treas. Reg. § 1.355-2(d)); or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing corporation or any controlled corporation (see section 355(e)(2)(A)(ii) and Treas. Reg. § 1.355-7).

SUMMARY OF FACTS

Parent is a corporation organized under the laws of State Z that, together with related entities, operates Business A, Business B, and Business C. Parent files its Federal income tax return on the accrual method of accounting on a calendar year basis. Parent owns all of the stock of Distributing, a Country A corporation. Parent acquired c% of Distributing stock at the time of Distributing's incorporation on Date 1 and the remaining d% of Distributing stock from an unrelated third party on Date 2.

Distributing owns all of the stock of Foreign Sub 1, a Country C corporation that conducts Business A. Additionally, Distributing owns all of the stock of Foreign Sub 2, Foreign Sub 3, and Foreign Sub 4, all Country D corporations that conduct Business A. Distributing owns all of the stock of Foreign Sub 5, a Country E corporation, and Foreign Sub 6, a Country F corporation, both of which conduct Business A. Following the

Proposed Transaction, these entities will all belong to the separate affiliated group within the meaning of section 355(b)(3)(B) of Distributing (the Distributing SAG) and will continue to conduct Business A.

Distributing conducts Business A in Country B through DRE 1, a State Z limited liability company that is disregarded as separate from Distributing, and Business B through DRE 2, a State Z limited liability company that is disregarded as separate from Distributing. Previously, Distributing also conducted Business B through Former DRE, which was an entity disregarded as separate from Distributing. On Date 3, however, Former DRE was merged into DRE 2 under the laws of State Z. Following the Proposed Transaction, DRE 1 and DRE 2 will be wholly owned by newly-formed Controlled, a Country B corporation, and will conduct Business A and Business B.

Distributing is undertaking the Proposed Transaction in order to (a) reduce the regulatory burdens associated with foreign ownership in a domestic business operation; (b) reduce administrative costs directly related to foreign ownership in a domestic entity, and (c) improve the success of the businesses by resolving management and internal operational issues under the current structure (collectively, the Corporate Business Purposes).

PROPOSED TRANSACTION

For what is represented to be valid business reasons, Distributing proposes to undertake the following Proposed Transaction:

- (i) Distributing will form Controlled under the laws of Country B and contribute the ownership of DRE 1 and DRE 2 to Controlled in exchange for all of the outstanding stock of Controlled (the Contribution).
- (ii) Immediately thereafter, Distributing will distribute all of the stock of Controlled to Parent (the Distribution).

REPRESENTATIONS

Distributing has made the following representations regarding the Contribution and the Distribution:

- (a) No intercorporate debt will exist between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled) at the time of or subsequent to the Distribution.

- (b) No part of the consideration to be distributed by Distributing will be received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (c) Distributing will treat all members of its respective SAG (as defined in section 355(b)(3)(B)) as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.
- (d) The five years of financial information submitted on behalf of Business A and Business B as conducted by Distributing SAG is representative of the present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) The five years of financial information submitted on behalf of Business A and Business B contributed to Controlled is representative of the present operations, and there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) Following the transaction, Distributing SAG and Controlled will each continue the active conduct of their respective businesses, independently and with their separate employees.
- (g) The Distributing SAG neither acquired Business A nor acquired control of an entity conducting Business A during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the Distributing SAG has been the principal owner of the goodwill and significant assets of Business A and will continue to be the principal owner following the Distribution, except to the extent of goodwill and significant assets transferred to Controlled in the Contribution.
- (h) The Distributing SAG neither acquired Business B nor acquired control of an entity conducting Business B during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of the Distribution, the Distributing SAG has been the principal owner of the goodwill and significant assets of Business B and Controlled will continue to be the principal owner following the Distribution.
- (i) The Distribution of the stock of Controlled is being carried out for the Corporate Business Purposes. The Distribution of the stock of Controlled is motivated, in whole or substantial part, by one or more of the Corporate Business Purposes.

- (j) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both. See section 355(a)(1)(B).
- (k) The total adjusted basis and the fair market value of the assets transferred to controlled in the Contribution will each equal or exceed the sum of (i) the total liabilities assumed (within the meaning of section 357(d)) by Controlled, and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.
- (l) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of: (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled in connection with the Contribution; (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the Contribution; and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing in connection with the Contribution.
- (m) The liabilities assumed (within the meaning of section 357(d)) by Controlled in the Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- (n) The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution. See section 1.368-1(e)(6).
- (o) The aggregate fair market value of the assets transferred to Controlled in the Contribution will equal or exceed the aggregate basis of these assets. See section 362(e) and section 1.362-4.
- (p) No investment tax credit determined under section 46 has been, or will be, claimed for any property that will be transferred by Distributing to Controlled in the Contribution.
- (q) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Contribution and Distribution.
- (r) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in

section 355(d)(5) and (8)) during the 5-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.

- (s) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Distribution.
- (t) Payments made in connection with all continuing transactions, if any, between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled), will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (u) No two parties to the Distribution are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).
- (v) The Distribution is not part of a plan or series of related transactions (within the meaning of section 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (w) Immediately after the Distribution, either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in the stock of Distributing or Controlled, who did not hold such an interest immediately before the Contribution and Distribution, or (ii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (x) Each party to the Contribution and Distribution will pay its own expenses, if any, incurred in connection with the Contribution and Distribution.
- (y) Controlled has not been a United States real property holding corporation as defined in section 897(c) at any time during the 5-year period ending on the date of the Distribution, and will not be a United States real property holding corporation immediately thereafter.

- (z) Distributing will be a controlled foreign corporation, within the meaning of section 957(a), immediately before and after the Distribution.
- (aa) Parent will be a section 1248 shareholder, within the meaning of section 1.367(b)-2(b), with respect to Distributing immediately before and after the Distribution.
- (bb) Distributing will not be a passive foreign investment company (PFIC) within the meaning of section 1297(a) immediately before or after the Distribution.
- (cc) Distributing will be exempt from taxation under section 884 for its taxable year that includes the Contribution and Distribution under the Country A Treaty.

RULINGS

- (1) The Contribution, followed by the Distribution, will be a reorganization under section 368(a)(1)(D). Distributing and Controlled each will be a party to the reorganization within the meaning of section 368(b).
- (2) Distributing will not recognize any gain or loss on the Contribution (sections 361(a) and 357(a)).
- (3) Controlled will not recognize any gain or loss on the Contribution (section 1032(a)).
- (4) Controlled's basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before the Contribution (section 362(b)).
- (5) Controlled's holding period in each asset received from Distributing in the Contribution will include the period during which Distributing held that asset (section 1223(2)).
- (6) Distributing will not recognize any gain or loss on the Distribution of Controlled stock to Parent (section 361(c)(1)).
- (7) Parent will not recognize any gain or loss (and will not include any amount in income) on the receipt of Controlled stock in the Distribution (section 355(a)(1)).
- (8) Parent's basis in the stock of Distributing and Controlled immediately after the Distribution will equal its basis in its Distributing stock immediately before the Distribution, allocated between the stock of Distributing and Controlled in proportion to the fair market value of each in accordance with section 1.358-2(a) (section 358(a), (b), and (c)).

- (9) Parent's holding period in the Controlled stock received in the Distributing will include the holding period of the Distributing stock on which the Distribution is made, provided Parent holds its Distributing stock as a capital asset on the date of the Distribution (section 1223(1)).
- (10) Earnings and profits, if any, will be allocated between Distributing and Controlled in accordance with section 312(h) and section 1.312-10(a).
- (11) Pursuant to section 1.367(b)-3(b)(3), Parent will include in income as a deemed dividend the all earnings and profits amount (as defined in section 1.367-2(d)) with respect to its stock of Distributing.
- (12) The Distribution will be a distribution to which sections 1.367(b)-1(c), 1.367(b)-5(a), and 1.367(b)-5(c) apply. If Parent's post-distribution amount (as defined in section 1.367(b)-5(e)(2)) with respect to Distributing or Controlled is less than Parent's pre-distribution amount (as defined in section 1.367(b)-5(e)(1)) with respect to Distributing or Controlled, then Parent's basis in such stock immediately after the distribution must be reduced by the amount of the difference. However, Parent's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, then Parent must instead include such amount in income as a deemed dividend from such corporation. If Parent reduces its basis in the stock of Distributing or Controlled (or has an inclusion with respect to such stock), the Parent shall increase its basis in the stock of the other corporation to the extent provided in section 1.367(b)-5(c)(4).

CAVEATS

We express no opinion about the federal income tax treatment of the Proposed Transaction under other provisions of the Internal Revenue Code or regulations or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding whether the Distribution satisfies the business purpose requirement of section 1.355-2(b); whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both (see section 355(a)(1)(B) and section 1.355-2(d)); and whether the Distribution is part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii) and section 1.355-7.

PROCEDURAL STATEMENTS

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed

by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Mark S. Jennings
Chief, Branch 1
Office of the Associate Chief Counsel
(Corporate)